



Writer's Direct Dial: 571-888-9348
Thomas.whitehead@bt.com

August 30, 2017

Via Electronic Filing
Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: ***Reply Comments of BT Americas Inc. in the Matter of Restoring Internet Freedom,
WC Docket No. 17-108***

Dear Ms. Dortch:

BT Americas Inc. ("BTA") files this reply comment letter on behalf of itself and BT plc's other wholly-owned indirect U.S. subsidiaries (hereinafter referred to as "BT"). BT submits this letter pursuant to the Notice of Proposed Rulemaking released on May 23, 2017, seeking comment on proposed rules that the Federal Communications Commission ("FCC" or "Commission") believes are necessary to "restore market-based policies to preserve the future of Internet Freedom."¹

BT shares the Commission's view that the Internet should be characterized by competition, choice, openness and innovation, and welcomes actions that further this goal. However, rather than preserving these key indicators of a vibrant Internet ecosystem, the Commission's proposal to roll back Title II regulation of broadband Internet access services ("BIAS") would introduce uncertainty into the marketplace. Instead of "flip-flopping" on this critical issue, the Commission should allow and encourage Congress to comprehensively address underlying competition issues through legislation.

The equities and interests involved in net neutrality are broader than those envisioned in the current or previous open Internet rules. Congress is better situated to examine all sides of the issue and take a balanced, enduring approach to addressing the concerns underlying those rules. For example, BT does not believe that the Commission would have to adopt downstream regulations to ensure an open Internet if the root of the problem – unregulated market power resulting in infrastructure bottlenecks – had been appropriately regulated. Ensuring dynamic

¹ Notice of Proposed Rulemaking, *Restoring Internet Freedom*, WC Docket No. 17-108, FCC, (May 23, 2017) ("Net Neutrality NPRM") Appendix B, ¶ 2.

retail access competition in the residential and enterprise markets by appropriately regulating wholesale access chokepoints would have resulted in a multiplicity of fixed Internet access providers available to serve the needs of consumers. Discrimination, throttling, blocking or other attempts by Internet access providers to leverage their market power over access would be unsuccessful in a vibrantly competitive Internet access market because consumers would simply switch to an alternate provider.²

However, this is not the course the Commission has chosen. Instead of regulating business access bottlenecks, the Commission has chosen to deregulate them despite the fact that 77% of business locations have only one facilities-based provider and another 22% are served by only two facilities-based providers.³ In the case of residential access, the Commission long ago ceded any Title II authority to regulate residential broadband access.⁴

Compounding the growth in power of access monopolies and duopolies is intense industry consolidation and news of even more concentration to come. Verizon acquired XO, AOL and Yahoo and now appears to be contemplating Disney. AT&T is in the process of merging with Time Warner. Centurylink swallowed Level 3 which had previously swallowed twtelecom. Altice is considering a run at Charter. Comcast which had acquired NBC appears interested in T-Mobile. There are rumors of many other mergers which are too numerous to mention here. The Commission, meanwhile, has either approved recent mergers without conditions that would safeguard competition or foregone exercising authority over the transaction entirely. Market consolidation, including mergers between access and content providers, will undoubtedly increase incumbent firms' dominance and solidify their control over the management and distribution of network traffic and content.

Advanced technologies like software defined networking and network function virtualization are making telecommunications networks ever more distributed. The "Internet of Things," a term which describes the proliferation of Internet protocol-enabled devices from cars to refrigerators, will radically increase the number of network endpoints. This places the small number of telecommunications services providers at a growing market advantage, as their networks touch more and more of consumers' daily lives. It also increases their incentive to distort the market in their favor and, in particular, in favor of their downstream businesses.

² In the UK, BT and other major ISPs operate under a net neutrality Code of Practice that sets out a straightforward set of net neutrality principles. Those principles require that we treat all traffic equally, regardless of its source, and that we are transparent about any traffic we do manage in order to minimize network congestion. The Code of Practice, coupled with the high degree of retail competition in the UK at the access level (guaranteed through the UK regulator, Ofcom's, active oversight of wholesale access bottlenecks) helps to safeguard net neutrality.

³ *Business Data Services in an Internet Protocol Environment, etc.*, WC Docket Nos. 16-143 et al. (rel. Apr. 28, 2017).

⁴ *See Inquiry Concerning High-Speed Access to the Internet Over Cable & Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, GN Docket No. 00-185, CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, 4802, para. 7 (2002); *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities et al.*, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, WC Docket Nos. 04-242, 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005) (*Wireline Broadband Classification Order*), *aff'd Time Warner Telecom, Inc. v. FCC*, 507 F.3d 205 (3d Cir. 2007).

BT believes, as do others, that enhancing competition not only maximizes broadband investment and technological innovation, but also serves to protect customers from abuse by dominant firms. The current and previous open Internet rules have failed to address the underlying issue of market concentration and lack of consumer choice. The rapidly expanding Internet ecosystem requires a more complete look at marketplace dynamics than the current or previous open Internet rules have taken. Given the stakes, Congress offers the best venue for comprehensive discussion of the various interests at play and the best opportunity for resolving the issue in an optimal, stable manner through legislation.

Sincerely,

/s/ Thomas W. Whitehead

Thomas W. Whitehead
Director, US Government Affairs
BT